

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MEMORANDUM ORDER

Dicam, Inc. ("Dicam") has just filed a patent infringement action against U.S. Cellular Corporation ("U.S. Cellular") and a number of manufacturers of products that allegedly infringe Dicam's United States Patent No. 4,884,132 ("the '132 Patent"). This memorandum order is issued sua sponte because of what appears to be a problematic aspect of Dicam's Complaint.

Although Complaint ¶16 charges that U.S. Cellular has sold, offered for sale and advertised cellular telephones that include those manufactured by its five codefendants, it seems most likely that each of those codefendants produces a discrete product.¹ And if that is so, of course it is entirely possible that some of those products may, while others may not, infringe the '132 Patent.²

¹ If instead the manufacturers are making the identical product on orders from U.S. Cellular, this order's directive may be disregarded.

² Nothing said here, of course, makes or implies any findings as to the validity of the '132 Patent or as to any

That being the case, this Court sees no legitimate reason (surely not the saving of \$1,400 in filing fees) for packaging what are really five different lawsuits into this single proceeding. If U.S. Cellular is indeed common to the claims against each manufacturer, what Dicam should do instead is to sue a pair of defendants--U.S. Cellular and a manufacturer--in each of five separate lawsuits.

One indicium of why that is appropriate is that if such lawsuits were to be filed separately and if a motion to reassign the higher-numbered cases to the calendar of the District Judge with the lowest-numbered case on grounds of relatedness were then to be brought under this District Court's LR 40.4, it would be highly doubtful that the actions would qualify for such treatment because of their inability to satisfy the criterion embodied in LR 40.4(b) (4). That does not mean of course that the separate cases could not qualify for coordinated discovery under the supervision of the Judge having the lowest-numbered case, as is frequently done in such situations.

Accordingly Dicam is ordered to dismiss four of the manufacturer defendants from this action forthwith, obviously without prejudice to its ability to bring comparable separate actions against them. In the meantime this Court is issuing its customary initial scheduling order, with the understanding that

infringement issues.

it will be applicable to U.S. Cellular and the chosen remaining manufacturer defendant.



Milton I. Shadur
Senior United States District Judge

Date: September 28, 2007